

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHELLE-LAEL B. NORSWORTHY,

Plaintiff,

v.

OFFICER FELIX, et al.,

Defendants.

Case No.: 1:23-cv-01151-NODJ-SKO

**ORDER STRIKING ORDER SETTING
MANDATORY SETTLEMENT
CONFERENCE**

(Doc. 3)

**ORDER VACATING INITIAL
SCHEDULING CONFERENCE SET FOR
SEPTEMBER 19, 2024**

**ORDER DENYING MOTION TO DISMISS
AS PREMATURE AND WITHOUT
PREJUDICE**

(Doc. 7)

Plaintiff Michelle-Lael B. Norsworthy, a former inmate at the Central California Women's Facility in Chowchilla, is represented by counsel in this civil rights action pursuant to 42 U.S.C. § 1983.

I. PROCEDURAL HISTORY

Plaintiff filed a complaint on August 2, 2023. (Doc. 1.) Summonses and new civil case documents issued the following day. (Docs. 2 & 3.)

On August 30, 2023, the summonses were returned executed as to all named Defendants. (Doc. 4.)

1 On September 18, 2023, the parties filed a Stipulation and Order to Continue Responsive
2 Pleading Deadline and Continuing Scheduling Conference. (Doc. 6.)

3 Defendants filed a Motion to Dismiss Plaintiff's Complaint on October 31, 2023. (Doc.
4 7.) On November 1, 2023, then assigned District Judge Ana de Alba issued a minute order
5 indicating the motion to dismiss would be decided on the papers without a hearing, citing Local
6 Rule 230(g). (Doc. 8.)

7 The parties filed a Joint Stipulation and Proposed Order to Request Amendment to
8 Briefing Schedule on November 13, 2023. (Doc. 9.)

9 On November 15, 2023, the Court issued its Order Directing Clerk's Office to
10 Redesignate Action From 440 (Other Civil Rights) to 550 (Civil Rights). (Doc. 11.) That same
11 date, the Court granted the parties' joint stipulation. (Doc. 12.)

12 In a minute order of November 27, 2023, the Initial Scheduling Conference set for
13 December 21, 2023, was continued to September 19, 2024. (Doc. 14.)

14 On November 28, 2023, Plaintiff filed an opposition to the motion to dismiss. (Doc. 15.)

15 On December 1, 2023, Chief Judge Kimberly J. Mueller issued the Order of Temporary
16 Reassignment to No District Court Judge (NODJ). (Doc. 16.)

17 **II. DISCUSSION**

18 As an initial matter, in light of the redesignation of this action from a 440 (Other Civil
19 Rights) action to a 550 (Prisoner Civil Rights) action, the Court will strike the Order Setting
20 Mandatory Scheduling Conference issued August 3, 2023 (Doc. 3) and vacate the Initial
21 Scheduling Conference set for September 19, 2024. The Court will issue new case documents for
22 this prisoner civil rights action—rather than those issued for a regular civil action—separately.

23 Second, this Court finds Defendants' motion to dismiss to be premature. While
24 summonses were executed and a responsive pleading required when this case was filed, the
25 complaint in this action is subject to screening pursuant to 18 U.S.C. § 1915. Whether Plaintiff is
26 represented by counsel is not relevant for this purpose because "[t]he court is required to screen
27 complaints brought by prisoners seeking relief against a governmental entity or officer or
28 employee of a governmental entity, regardless of whether plaintiff is represented by counsel."

1 *Parks v. Rolfing*, No. 2:15-cv-1505-CKD-P, 2018 WL 2128393, at *2 (E.D. Cal. May 9, 2018);
 2 *Rios v. Dragon*, No. 2:20-cv-00146-ADA-HBK (PC), 2022 WL 11324595, at *1, 3 (E.D. Cal.
 3 Oct. 19, 2022) (citing *Parks v. Rolfing* and denying motion to dismiss as premature because
 4 court has not yet screened complaint); *Munoz v. California Department of Corrections*, No. 1:16-
 5 CV-01103-LJO-MJS, 2016 WL 6298533, at *1 (E.D. Cal. Oct. 27, 2016) (screening former state
 6 prisoner's complaint who is represented by counsel in § 1983 action).; *see also Medina v.*
 7 *Kernan*, No. 1:19-cv-00345-DAD-JLT, 2021 WL 5179899, at *2 (E.D. Cal. Nov. 8, 2021); *Rojas*
 8 *v. Brown*, No. 1:17-cv-01514-DAD-JLT, 2021 WL 4811180, at *1 (E.D. Cal. Oct. 15, 2021);
 9 *Johnson v. Hall*, No. 2:19-cv-1752-KJN-P, 2019 WL 4392413, at *1 (E.D. Cal. Sept. 13, 2019).
 10 Although at least one judge of this district has found the screening of complaints to be optional
 11 when plaintiffs are proceeding with counsel (*see Simmonds v. CDCR*, 49 F.Supp.3d 700, 701
 12 (E.D. Cal. 2014)), this Court is unaware of a decision barring the screening of a represented
 13 prisoner's complaint.

14 To the extent service of a complaint is typically ordered following screening in a prisoner
 15 civil rights action and where the Court has found a cognizable claim or claims have been
 16 plausibly alleged, service of process is unnecessary because the Defendants have already
 17 appeared. Once the Court has screened the complaint and if it finds a cognizable claim or claims,
 18 the Court will issue an order, either separately or concurrently with its screening order, directing
 19 Defendants to file a responsive pleading.

20 In sum, Defendants' motion to dismiss is premature because the Court has not yet
 21 screened the complaint in this former prisoner's civil rights action. The motion to dismiss will be
 22 denied, without prejudice as premature. The Court will screen Plaintiff's complaint, in accordance
 23 with 28 U.S.C. § 1915A(a), in due course. And, as noted above, the Court will separately issue
 24 new case documents specific to prisoner civil rights cases.

25 **III. CONCLUSION AND ORDER**

26 For the reasons stated above, **IT IS HEREBY ORDERED** that:

- 27 1. The Order Setting Mandatory Scheduling Conference issued August 3, 2023 (Doc. 3)
 28 is **STRICKEN**;

2. The Initial Scheduling Conference set for September 19, 2024, at 9:30 a.m., is
VACATED;
3. The Court will issue new case documents for this prisoner civil rights action
separately;
4. Defendants' Motion to Dismiss filed October 31, 2023 (Doc. 7) is DENIED, without
prejudice, as premature; and
5. The Court will screen Plaintiff's complaint (Doc. 1) filed August 2, 2023, in due
course and pursuant to 28 U.S.C. § 1915A(a).

IT IS SO ORDERED.

Dated: **December 8, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE